

19545-

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-200083

DATE: September 29, 1981

MATTER OF: Robert L. Hengstebeck - Release from
Liability - Sale and Purchase of Residences

DIGEST: Transferred employee sold old residence in Dearborn, Michigan, and buyer assumed mortgage. He arranged to purchase a new residence in Cleveland, Ohio, but lender in Cleveland required employee to obtain release from liability on Dearborn residence before loan would be granted. Since the employee did not obtain release as a personal preference for own protection, and release was prerequisite to obtaining financing on Cleveland residence, customarily paid by purchaser, he is entitled to reimbursement of charge of \$200 assessed for processing release from liability.

This decision is in response to a request by Ms. V. G. Leist, Authorized Certifying Officer, Internal Revenue Service (IRS), Department of the Treasury, for a decision as to whether Mr. Robert L. Hengstebeck, an employee of the IRS, may be reimbursed for the cost of a \$200 release of liability fee paid by him in connection with the sale and purchase of residences at his old and new official duty stations. A reclaim voucher seeking reimbursement of the \$200 charge has been submitted for consideration.

The question asked by Ms. Leist is whether the charge of \$200 for the release from liability is to be considered a finance charge under Regulation Z, section 226.4, title 12, Code of Federal Regulations, 1980, and therefore, not reimbursable. Also for determination is whether the release from liability may be considered as a miscellaneous expense reimbursable under the provisions of paragraph 2-6.2d of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973).

The facts, briefly stated, are as follows: By travel authorization dated February 27, 1980, Mr. Hengstebeck was officially authorized to transfer from Detroit, Michigan, to Cleveland, Ohio.

116453

~~018664~~

In March, while on a house-hunting trip, Mr. Hengstebeck made a large downpayment on a house in Cleveland and applied for a mortgage loan through a local bank. He placed his residence in Dearborn, Michigan, on the real estate market. However, at that time, the interest rate on conventional mortgages was 18 percent and hence there were very few interested buyers. In May, a buyer made an offer to purchase the house on an assumption basis. The employee accepted the offer. Shortly thereafter, the bank in Cleveland notified Mr. Hengstebeck that his mortgage loan application had been approved. However, the letter of approval contained the notation, "No assumptions." The bank explained that in order for the loan to be approved, the claimant could not have another outstanding mortgage which had been assumed by another buyer. After an explanation by Mr. Hengstebeck that such a requirement would negate the pending sale of his Dearborn residence, the bank compromised and agreed to grant the mortgage loan provided he obtained a release from liability under the assumption arrangement. The lender in Detroit agreed to release Mr. Hengstebeck from liability on the Dearborn residence if the prospective purchaser met their financial standards, including a credit history investigation. The employee was granted a release from liability and was charged a fee of \$200 by the Detroit financial institution for processing the release.

The basic authority for reimbursement of expenses incurred in connection with residence transactions incident to a permanent change of official station is found at 5 U.S.C. § 5724a(4) (1976), and in paragraph 2-6.2d of the Federal Travel Regulations which provides:

"Miscellaneous expenses. The following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if they are customarily paid by the purchaser of a residence at the new official station, to the

extent they do not exceed amounts customarily paid in the locality of the residence. * * * The cost of a mortgage title policy paid for by the employee on a residence purchased by him is reimbursable but costs of other types of insurance paid for by him, such as an owner's title policy, a 'record title' policy, mortgage insurance, and insurance against damage or loss of property, are not reimbursable items of expense. * * * Notwithstanding the above, no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. * * *"

With respect to the issue as to whether the release from liability may be regarded as a finance charge, 12 C.F.R. § 226.4 (1980), provides:

"(a) General rule. Except as otherwise provided in this section, the amount of finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges. * * *"

A mortgage release fee is not included in the types of charges enumerated in section 226.4(a). While in this case, the lender at Mr. Hengstebeck's new duty station imposed the obtaining of a release from liability by the employee as a condition of the extension of credit,

this was not, in reality, a finance charge. We view such requirement as an additional protection to the lending institution in granting the mortgage loan where, as here, the employee was required to sever any and all liability he still retained on his residence at his old duty station. In fact, the charge closely resembles a credit report which can be specifically excluded from the finance charge in a real property transaction. See 12 C.F.R. § 226.4 (e)(6) (1980). Under the circumstances, we are of the opinion that the charge of \$200 for obtaining a release from liability does not constitute a finance charge under the provisions of the Truth in Lending Act or Regulation Z, section 226.4(a), title 12, Code of Federal Regulations.

In determining whether the release from liability may be considered as a miscellaneous expense reimbursable under the provisions of paragraph 2-6.2d of the FTR, it is noted that reimbursement of a fee charged for such release on an existing mortgage is not specifically precluded by the cited regulation. This Office has held that where the sale of an employee's residence at his duty station was not dependent upon his obtaining a release from personal liability on the existing mortgage which had been assumed by the purchaser, a fee charged for such release is not reimbursable. We stated that allowances under section 4 of Bureau of the Budget (BOB) Circular No. A-56 (the predecessor regulation of paragraph 2-6.2d of the FTR) are limited to those expenses required to be paid by the employee incident to the authorized real estate transactions as set forth in section 4.1 of the BOB Circular. Thus, fees assessed for the purpose of releasing a seller from personal liability on a mortgage assumed by the purchaser, generally, are not reimbursable, being merely a matter of personal preference and not necessary to consummation of the sale. B-178039, April 9, 1973; B-174011, November 15, 1971; B-169477, June 2, 1970.

However, here, while the obtaining of the release from liability by Mr. Hengstebeck was not necessary to consummation of the sale of the Dearborn residence, it

B-200083

was a necessary ingredient, a condition precedent to the purchase of the Cleveland residence, required by the lending institution. In other words, the bank in Cleveland required the employee to rid himself of any contingent liability he still retained under the Dearborn mortgage before they would grant final approval of his loan to purchase the new residence in Cleveland. Hence, the obtaining of the release from liability on the Dearborn residence was not disassociated from the purchase of the Cleveland residence. The obtaining of the release on the old residence was a part of the "total financial package," and essential to the consummation of the purchase of the new residence in Cleveland. Obtaining the release from liability was not a matter of personal preference on the part of Mr. Hengstebeck. Arthur J. Kerns, B-201899, August 12, 1981.

We would analogize the fee charged for obtaining the release from liability with the premium paid for a mortgage title policy. The decisions of this Office have recognized that a mortgage title policy which is purchased primarily for the protection of the lender, is reimbursable within the meaning of paragraph 2-6.2d of the FTR. On the other hand, we have stated that as distinguished from a mortgage title policy, the cost of which is reimbursable, an owner's title policy is one that the purchaser of a residence obtains for his own protection. As such, it is generally regarded as a nonreimbursable personal expense and not essential to consummation of the real estate transaction. Notwithstanding the fact that the FTR disallows the cost of an owner's title policy, this Office has held that the employee may be reimbursed for the cost of such insurance where (1) the owner's title policy was purchased as a prerequisite to the transfer of the property, or (2) the policy was purchased as a prerequisite to obtaining financing incident to such a transfer, and such cost is customarily paid by the purchaser. See William V. Ferris, B-172742, November 24, 1980, and cases cited therein.

B-200083

Applying the above principles to the claim before us, the following conclusions become evident: (1) Mr. Hengstebeck did not obtain the release from liability on the Dearborn residence for his own protection; and (2) he obtained the release as a prerequisite to obtaining financing on the Cleveland property incident to his transfer of official station.

In regard to the question of whether such cost is customarily paid by the purchaser in the Cleveland area, we have been informally advised by officials of the Service Office of the Department of Housing and Urban Development, Cleveland, Ohio, that the practice of requiring purchasers to obtain a release from liability is often utilized by lending institutions in the Cleveland area to further protect themselves in granting mortgage loans. Such practice was described as being common in occurrence and not unusual. It was also reported that the assessed charge of \$200, although incurred in the Detroit area, appears to be reasonable in amount.

Accordingly, the reclaim voucher in the amount of \$200, representing the fee charged Mr. Hengstebeck to obtain a release from liability in the sale of his old residence, may be certified for payment.



Acting Comptroller General
of the United States